



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91342; File No. SR-Phlx-2021-13]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend General 9, Section 19, “Discretionary Power as to Customers’ Accounts” and Adopt Two New Rules Within General 9 at Sections 30 and 45**

March 17, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 5, 2021, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend General 9, Section 19, “Discretionary Power as to Customers’ Accounts” and adopt two new rules within General 9 at Sections 30 and 45.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A proposal to amend General 9, Section 19, “Discretionary Power as to Customers’ Accounts” and adopt two new rules within General 9 at Sections 30 and 45. Each change is described below.

General 9, Section 19

Today, General 9, Section 19, “Discretionary Power as to Customers’ Accounts” has a rule citation to former “NASD Rule 2510.” General 9, Section 19 was relocated<sup>3</sup> in 2020 from Phlx Rule 754 in connection with a Rulebook harmonization effort.<sup>4</sup>

During 2008, FINRA embarked on an extended process of moving rules formerly designated as “NASD Rules” into a consolidated FINRA rulebook.<sup>5</sup> As part of that

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<sup>3</sup> See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>4</sup> See Securities Exchange Act Release No. 78419 (July 26, 2016), 81 FR 50582 (August 1, 2016) (SR-Phlx-2016-78) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Rule 754 (Employees’ Discretion as to Customers’ Accounts)).

<sup>5</sup> See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (SR-FINRA-2010-052) (“FINRA Filing”).

relocation, NASD Rule 2510 was relocated to FINRA Rule 3260 without any substantive changes to the NASD rule text.<sup>6</sup>

At this time, the Exchange proposes to update the reference to “NASD Rule 2510” within General 9, Section 19 and replace it with a reference to “FINRA Rule 3260”. The Exchange also proposes to add a new section (b) to provide cross-references to rules cited within FINRA Rule 3260 to corresponding Phlx rules. In doing so, Phlx is cross-referencing two new rules which are being adopted by this proposal.

The Exchange also proposes to amend the title of this rule from “Discretionary Power as to Customers’ Accounts” to “Discretionary Accounts.”

#### General 9, Section 30

The Exchange proposes to adopt a new General 9, Section 30, which is currently reserved, which is identical to FINRA Rule 4511 in order to align its rule with FINRA’s rule.

By way of background, current FINRA Rule 4511 streamlined, and replaced, the language of former NASD Rule 3110(a) to clarify that members are obligated to make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.<sup>7</sup> FINRA Rule 4511 requires members to preserve for a period of at least six years those FINRA books and records for which there is no specified retention period under the FINRA Rules or applicable Exchange Act rules. The rule also clarifies that members are required to preserve the books and records required to be made pursuant to the FINRA Rules in a format and media that complies with Exchange Act Rule

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<sup>6</sup> See supra note 21 [*sic*].

<sup>7</sup> FINRA Filing at 5851.

17a-4. FINRA deleted the general recordkeeping provisions of NYSE Rule 440 because its provisions are substantially similar to FINRA Rule 4511.<sup>8</sup>

Phlx proposes to incorporate by reference FINRA Rule 4511. The Nasdaq Stock Market LLC (“Nasdaq”) General 9, Section 30 similarly incorporates FINRA Rule 4511.

General 9, Section 45

The Exchange proposes to adopt a new General 9, Section 45, which is currently reserved, and title that rule “Customer Account Information.” The Exchange proposes to adopt rule text similar to Nasdaq General 9, Section 45, which is based on FINRA Rule 4512.

By way of background, former NASD Rule 3110(c)(1) required that members maintain certain information relating to customer accounts, including, among other things, the signature of the registered representative introducing the account and signature of the member, partner, officer or manager who accepts the account. FINRA proposed to simplify this provision by instead requiring members to maintain the name of the associated person, if any, responsible for the account. Current FINRA Rule 4512 requires where a member designates multiple individuals as being responsible for an account, the member maintain each of their names and a record indicating the scope of their responsibilities with respect to the account. Also, the rule requires that members maintain the signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts.<sup>9</sup>

FINRA provides that with respect to accounts opened pursuant to prior NASD Rules (*e.g.*, the January 1991 cut-off specified in NASD Rule 3110(c)), members will be permitted to continue maintaining the information required by those prior NASD Rules

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<sup>8</sup> *Id.*

<sup>9</sup> FINRA Filing at [*sic*]

until such time as they update the account information in the course of their routine and customary business or as required by other applicable laws or rules. Additionally, FINRA's rule added supplementary material to:

- Clarify that required customer account records are subject to a six-year retention period;
- Remind members that they may be subject to additional recordkeeping requirements under the Exchange Act (*e.g.*, Exchange Act Rule 17a-3(a)(17));
- Remind members of their obligation to comply with the requirements of FINRA Rule 2070 (Transactions Involving FINRA Employees); <sup>[21]</sup> [*sic*] and
- Provide general explanations of the terms "maintain" and "preserve" for purposes of Rule 4512 only.

The remaining provisions of NASD Rule 3110(c) were incorporated into FINRA Rule 4512 without material change.

Phlx proposes to adopt a new rule, similar to Nasdaq General 9, Section 45, which provides:

(a) Phlx member organizations and persons associated with a member shall comply with FINRA Rule 4512 as if such Rule were part of the Phlx rules.

(b) For purposes of this Rule:

(1) references to Rule 3260 shall be construed as references to General 9, Section 19;

(2) references to Rules 2070, 2090, and 4512 shall be construed as references to General 9, Sections 29, 10, and this Rule, respectively;

(3) references to "a prior FINRA rule" shall be construed as references to "a FINRA or PHLX rule in effect prior to the effectiveness of FINRA Rule 4512";

(4) PHLX and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of BX. Therefore, PHLX members are complying with this Rule by complying with FINRA Rule 4512 as written, including, for example, providing information required by FINRA

staff. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under this Rule are being performed by FINRA on behalf of PHLX.

This rule text incorporates FINRA Rule 4512 similar to Nasdaq General 9, Section 45.

#### Exemption Request

The Exchange will request an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for those rules of another self-regulatory organization (“SRO”) that it proposes to incorporate by reference and to the extent such rules are effected solely by virtue of a change to any of those rules.

#### Implementation

The proposed rule changes that are the subject of this filing will be operative on May 31, 2021, but only if the Exchange’s request for an exemption under Section 36 of the Exchange Act from filing proposed rule changes, described above, is granted by that date. The Exchange will publish a notice to confirm the status of its exemptive request on or before May 31, 2021. In the event the exemption is not granted by May 31, 2021, the Exchange will submit a filing to designate a different operative date.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed changes to General 9, Section 19 and adoption of the books and records rules within General 9, Sections 30 and 45 will conform certain Phlx's Rules to FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with Phlx.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed changes to General 9, Section 19 and adoption of the books and records rules within General 9, Sections 30 and 45 will conform Phlx Rules to those of FINRA which has no impact on competition. Today, FINRA members must adhere to these rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-13 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2021-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.



Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2021-13 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>14</sup> 17 CFR 200.30-3(a)(12).